



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226

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USE OF CARBON DIOXIDE FOR DISPENSING WINE FROM ORIGINAL CONTAINERS BY LIQUOR DEALERS

To proprietors of bonded wineries, bonded wine cellars, taxpaid wine bottling houses; wholesale liquor dealers, retail liquor dealers, importers; and others concerned:

PURPOSE: The purpose of this circular is to notify industry members of ATF Ruling 85-9 which will be published in the 1985 (Volume 3), Alcohol, Tobacco and Firearms Quarterly Bulletin. This ruling refers to the provisions of 27 CFR 194.293, which prohibits retail liquor dealers from mixing or compounding any liquors, including wine, in advance of sale, except for immediate consumption on the premises.

The ruling permits the use of carbon dioxide as a dispensing mechanism for original wine containers under certain conditions.

The prohibition on the use of carbon dioxide when dispensing wine from other than original containers, as stated in ATF Ruling 73-21 (ATF C.B. 1973, 77-78), remains in effect.

TEXT OF RULING. The ruling will read as follows:

ATF Ruling 85-9

The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked whether carbon dioxide can be used in dispensing wine from original containers where containers are used for other than immediate consumption. These original containers are larger than standard size bottles and require a dispensing mechanism which will release the wine into a glass rapidly and efficiently. The dispensing mechanism in question would allow carbon dioxide to be added only to the headspace of a large container to exert a constant pressure on the surface area of the liquid and cause the liquid to be forced more rapidly from the container. The carbon dioxide would only be used to force the liquid from the container. These containers are designed so that the carbon dioxide does not actually enter the liquid, or increase the carbon dioxide level of the wine being dispensed.

Section 5041(b) of the Internal Revenue Code imposes a tax on still wine containing not more than 14 percent alcohol by volume at a rate of \$.17 per wine gallon, and a tax of \$2.40 per wine gallon for artificially carbonated wine. Still wine is defined in section 5041(a) to include wines containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine. Any addition of carbon dioxide to wine is considered a cellar treatment of wine, and such an activity can only be conducted on a bonded wine cellar premises established under section 5351 of the Code.

27 CFR § 194.293 prohibits retail liquor dealers from mixing or compounding any alcoholic liquors in advance of sale except for immediate consumption on the premises. The term "Liquors" is defined in 27 CFR § 194.11 to include wine. Therefore, a retail dealer is prohibited from mixing or compounding wine with carbon dioxide, except for immediate consumption of the wine on the premises.

In ATF Ruling 73-21, the Bureau ruled that retailers could use gravity, air pressure, or nitrogen gas in dispensing wine from other than original containers, but that the use of carbon dioxide was prohibited. The basis of that ruling was that the use of carbon dioxide under these circumstances, with the technology available, would likely mix with the wine and constitute an unauthorized cellar treatment of the wine. ATF Ruling 73-21 did not address the use of carbon dioxide in dispensing wine from original containers. When that ruling was issued, original wine containers were only available in consumer size bottles. Due to advances in container technology, today there is a wide range of sizes of original containers available to the wine industry. Many of the containers are equipped with dispensing devices which allow carbon dioxide to be added only to the headspace of a large container which would not result in a potential jeopardy to the Federal revenue or an unauthorized cellar treatment of the wine.

While carbon dioxide can under certain conditions be used as a dispensing mechanism for original wine containers, this is based on the technology available for original containers which insures that the carbon dioxide is not injected into the wine. Carbon dioxide is still not allowed to be used to dispense wine from other than original containers. Furthermore, retailers are cautioned

that any use of carbon dioxide as a dispensing mechanism for wine stored in large containers which results in an increase in the level of carbon dioxide in the wine is an unauthorized cellar treatment and also, may result in an increase in tax liability.

Held, the use of carbon dioxide in dispensing wine for other than immediate consumption from large original containers is permissible if the carbon dioxide is not injected or sparged into the wine and the carbon dioxide level of the wine is not increased. Furthermore, the prohibition on the use of carbon dioxide when dispensing wine from other than original containers, as stated in ATF Ruling 73-21, remains unchanged.

INQUIRIES. Inquiries concerning this circular should refer to its number and be addressed to the Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226.

Director